

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, April 13, 2021)

803 KAR 2:120. Citations.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [~~Pursuant to the authority granted~~] the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements [~~by KRS 338.051, the following rules and administrative regulations are adopted, formulating the procedure to be followed by the commissioner when a citation has been issued~~]. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes occupational safety and health citation procedures [~~The function of this administrative regulation is to spell out with clarity the procedure which must be~~] followed by the [~~compliance officers both as to form and content of the citation. Also, the administrative regulation makes clear the procedure to be followed by the Commissioner of the~~] Department of Workplace Standards [~~in reviewing the inspection conducted by the compliance officers~~].

Section 1. Definitions. (1) "Commissioner" is defined ~~by~~***[in]*** KRS 338.015.

(2) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Occupational safety and health standard" is defined by KRS 338.015(3)~~[(4)]~~.

(6) "Review commission" is defined by KRS 338.015(8).

(7) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal~~[,]~~ or state holidays, ~~or~~***[as well as]*** the day of receipt of notice.

Section 2. Citations. (1) [~~The Commissioner of the Department of Workplace Standards shall review the inspection report of the compliance safety and health officer.~~] If [~~, on the basis of the report~~] the commissioner ***has reason to believe that***~~*[believes]*~~ ***an*** [~~that the~~] employer [~~has~~] violated a requirement of KRS Chapter 338, or any occupational safety and health standard, rule, or order promulgated pursuant [~~to~~] KRS Chapter 338, ***the commissioner***~~*[he or she]*~~ shall issue, with delivery or receipt confirmation, [~~to~~] the employer a citation indicating the violation~~[violations]~~.

(2) An appropriate citation shall be issued even ***if***~~*[though]*~~ after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, ***the***~~*[such]*~~ alleged violation.

(3) Each [~~Any~~] citation shall be issued with reasonable promptness [~~after termination of the inspection~~].

Section 3 [2]. Content of Citation. (1) Each [A] citation shall describe with particularity the nature of the alleged violation, including a reference to the ***provision or provi-***

~~sions~~[provision(s)] of KRS Chapter 338, standard, rule, administrative regulation, or order ~~al-~~legedly~~[alleged]~~ [to have been] violated.

(2) Each [Any] citation shall ~~establish~~ [also fix] a reasonable date by which the alleged violation shall be remedied~~[eliminated]~~~~[time or times for the abatement of the alleged violation]~~.

(3) Each citation may propose a civil penalty.

~~Section 4.~~[Section 3.] Citations Issued for Requested Inspections. If a citation is issued for a violation alleged in request for inspection pursuant KRS 338.121 ~~[under 803 KAR 2:090, Section 1(1), or a notification of violation under 803 KAR 2:090, Section 1(3)]~~, a copy of the citation shall ~~[also]~~ be sent, with delivery or receipt confirmation, to the employee or representative of employees who made ~~the~~[such] request or notification.

~~Section 5.~~[4. Informal Review of Inspection. After an inspection, if the commissioner determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under 803 KAR 2:090, Section 1(1), or a notification of violation under 803 KAR 2:090, Section 1(3), the informal review procedures prescribed in 803 KAR 2:090, Section 2, shall be applicable. After considering all views presented, the commissioner shall either affirm his determination, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The commissioner shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the commissioner shall be final and not subject to review.

~~Section 5.~~Citation]. Final Order Statement. Each citation shall state the citation shall be deemed a final order of the review commission and not be subject to review by any court or agency if an employer, employee, or representative of the employees fails to notify the commissioner within fifteen (15) working days from the receipt of the citation that he or she intends to contest the citation. ~~[Every citation shall state that the issuance of a citation does not constitute a finding that a violation of KRS Chapter 338, or any standard, rule, order or administrative regulation filed pursuant thereto, has occurred unless there is a failure to contest as provided for in KRS Chapter 338 or, if contested, unless the citation is affirmed by the review commission].~~

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